



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/605,226

09/16/2003

Stephen J Brown

7553.00110 / 03-0910

2225

60683 7590 04/13/2010
HEALTH HERO NETWORK, INC.
2400 GENG ROAD, SUITE 200
PALO ALTO, CA 94303

EXAMINER

FUELLING, MICHAEL

ART UNIT

PAPER NUMBER

3626

MAIL DATE

DELIVERY MODE

04/13/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/605,226	Applicant(s) BROWN, STEPHEN J	
	Examiner Michael Fuelling	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) 22, 24, 27, 67 and 71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 23, 25, 26, 28-66, 68-70 and 72-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3626

DETAILED ACTION

This is Final office action for Application Number 10/605,226 filed 09/16/2003.

Claims 1-87 are pending.

Claims 22, 24, 27, 67 and 71 have been cancelled.

Claims 1-21, 23, 25, 26, 28-66, 68-70 and 72-87 currently are pending and have been examined.

Response to Amendment

While there are a number of issues that call in to question the amendment, the examiner has refrained from sending notice of non-compliance pursuant to 37 CFR 1.121, and has examined the amendment on its merits.

For example, the amendment shows claims 88-145 as withdrawn while the amendment did not list the text of those claims as required. It appears applicant meant to type (cancelled) rather than (withdrawn). Similarly, it appears applicant meant to type (currently amended) rather than (original) with respect to claim 32.

To the extent the applicant chooses to request continued examination, any amendment filed with such request must comply with the law.

The objections to the drawings and the claims are withdrawn.

The 35 USC 112, second paragraph, and 101 claim rejections are withdrawn.

The provisional statutory double patenting rejection with respect co-pending Application No. 11/362,041 is withdrawn.

Art Unit: 3626

Terminal Disclaimer(s)

The applicant indicated in its response (pp 23-24) it filed a terminal disclaimer with respect to Brown, U.S. Patent No. 7,624,028. It appears the applicant made a mistake as no such terminal disclaimer which lists that patent appears on the record for this application.

A provisional obviousness-type double patenting rejection will not be made with respect to co-pending Application No. 11/362,041 in consideration of the terminal disclaimer that was filed which lists such application.

Response to Arguments

Applicant's arguments filed 03/11/2010 have been fully considered but they are not persuasive. The previously made 103(a) rejections are maintained on the same grounds.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

It appears applicant's primary argument is the contention that the prior art does not disclose a "central server" which performs the recited functions. Applicant does not provide a controlling or limiting definition for its "central server" and, as such, this feature must be broadly interpreted. Accordingly, the examiner finds Fu, Kirk and Lee make obvious a "central server" performing the recited functions.

The old and well known in the prior art statements made by the examiner in the first office action on the merits have been taken to be admitted prior art because applicant failed adequately traverse such assertions. To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating

Art Unit: 3626

why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 (“[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention.”).

For claims 20 and 63, applicant did not contest the noticed limitation of a “program cartridge” is old and well known. The applicant rather argued its amended limitation is not old and well known. As such, it is admitted that a program cartridge is old and well known in the computer arts. Further, numerous patents assigned to Nintendo Co. evidence a memory circuit that is a program cartridge is old and well known in the computer arts, such as Nakagawa, US Patent Nos. 4799635; 4984193; 5070479 and 5426762.

For claims 43 and 86, the noticed fact which applicant traverses is not the same fact which the examiner noticed. For example, the applicant references some limitation which purportedly includes the word ‘only’. Such word is not found in original or amended claims 43 or 86, or even the original or amended claim set. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

Art Unit: 3626

subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1-13, 15, 16, 21, 38-42, 44-56, 58, 59, 64-66, 81-85 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fu et al., US Patent No. 4,803,625 (Fu) in view of Kirk et al., US Patent No. 5,390,238 (Kirk).

As per claims 1, 44 and 87, Fu discloses a system and method, the method comprising:

- at a plurality of remote patient sites, each site of said plurality of remote patient sites including a device having (Fig. 1)

(i) at least one display (C6, L40),

(ii) a data management unit facilitating collection of health-related data of at least one patient and (C6, L45)

(iii) program instructions stored in a memory circuit to collect said health-related data and generate information in response to said health-related data (C7, L5); and

Art Unit: 3626

- connecting at least one central server for communication with the device at the plurality of remote patient sites, wherein said at least one central server is configured to

(i) receive said health-related data from said device (C7, L55),

(ii) analyze said health related data (C8, L10),

(iii) produce reports, including standardized reports, from said health related data (C8, L10),

Fu does not appear to expressly disclose the server is configured to:

(iv) transmit said reports to a health care professional associated with said at least one patient,

(v) transmit at least one message for presentation on said at least one display and said at least one message is sent by said health care professional in response to at least one of said reports

Kirk teaches this reporting / messaging feature with health care professionals (Abstract and Figs. 1-3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Fu to include a reporting / messaging feature because it is the combination of known elements and the results would have been predictable.

As per claims 2-10, 44-53, 65 and 66 Kirk teaches various messaging / reporting options (columns 3-5).

As per claims 21 and 64, Fu further discloses a computer (C6, L45)

As per claims 11-13, 15, 16, 54-56, 58, and 59, Fu discloses monitoring devices (C7, L5).

As per claims 38-42 and 81-85, Fu discloses computer programs and collection of various data (Abstract).

Art Unit: 3626

2. Claims 14 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fu, in view of Kirk, in further view of Fujimoto, US Patent No. 5,339,821 (Fujimoto).

Fu and Kirk do not appear to expressly disclose or teach operational buttons, and Fujimoto teaches such (Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the invention of Fu, as modified by Kirk, to include operational buttons because it is the combination of known elements and the results would have been predictable.

3. Claims 17-19 and 60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fu, in view of Kirk, in further view of Beckers, US Patent No. 5,019,974 (Beckers).

Fu and Kirk do not appear to expressly disclose or teach handheld devices with graphical displays, and Beckers teaches such (Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the invention of Fu, as modified by Kirk, to include handheld devices with graphical displays because it is the combination of known elements and the results would have been predictable.

4. Claims 20, 43, 63 and 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fu, in view of Kirk, in further view of Official Notice.

Fu and Kirk do not appear to expressly disclose or teach a memory cartridge or authorization codes. The examiner took Official Notice that such elements are old and well known in the computer arts. It would have been obvious to one of ordinary skill in the art at the

Art Unit: 3626

time of the invention to further modify the invention of Fu, as modified by Kirk, to include these features because it is the combination of known elements and the results would have been predictable.

5. Claims 23, 25, 26, 28-32, 68-70 and 72-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fu, in view of Kirk, in further view of Lee, US Patent No. 4,838,275 (Lee).

As per claim 23, Fu and Kirk do not appear to expressly disclose or teach:

- one health care professional computer, remotely located from and in signal communication with the central server to receive the reports

Lee teaches such a remote computer (118a).

It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the invention of Fu, as modified by Kirk, to include a remote computer because it is the combination of known elements and the results would have been predictable.

As per claims 25, 26, 28-32, 68-70 and 72-75, Lee evidences that standardized and statistical reports are old and well known.

6. Claims 33-37 and 76-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fu, in view of Kirk, in further view Dessertine, US Patent No. 5,016,172 (Dessertine).

Fu and Kirk do not appear to expressly disclose or teach a user's selection of portions of displays, and Dessertine teaches such (columns 3 & 4). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the invention of Fu, as

Art Unit: 3626

modified by Kirk, to allow a user's selection of portions of displays because it is the application of known technique to a known system and method and the results would have been predictable.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 3626

7. Claims 11, 54 and 87 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6, 24 and 1, respectively, of Brown, U.S. Patent No. 7,624,028.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 11, 54 and 87 of this application include all of the limitations of claims 6, 24 and 1, respectively, of the above-identified patent.

Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Fuelling whose telephone number is (571)270-1367. The examiner can normally be reached on Monday - Friday, 8:30 am - 5 pm, EST.

Art Unit: 3626

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571)272-6787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Fuelling/
Examiner, Art Unit 3626

/Robert Morgan/
Primary Examiner, Art Unit 3626